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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 MONJAE NYKYLE  
HAYNESWORTH,

10 Plaintiff,

11 v.

12 PIERCE COUNTY JAIL,

13 Defendant.

CASE NO. 3:19-CV-05229-RBL-DWC

ORDER TO FILE AMENDED  
COMPLAINT

14  
15 Plaintiff MonJae Nykyle Haynesworth, proceeding *pro se*, filed this civil rights complaint  
16 under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint under 28 U.S.C. §  
17 1915A, the Court finds Plaintiff has failed to state a claim, but provides Plaintiff leave to file an  
18 amended pleading by May 9, 2019, to cure the deficiencies identified herein.

19 **I. Background**

20 In the Complaint, Plaintiff alleges Defendant Pierce County Jail ("the Jail") violated  
21 Plaintiff's constitutional rights by restricting his visitation and telephone access. Dkt. 4.

22 **II. Discussion**

23 Under the Prison Litigation Reform Act of 1995, the Court is required to screen  
24 complaints brought by prisoners seeking relief against a governmental entity or officer or

1 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the  
2 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to  
3 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant  
4 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,  
5 152 F.3d 1193 (9th Cir. 1998).

6       A. *Failure to State a Claim*

7       In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he  
8 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)  
9 the violation was proximately caused by a person acting under color of state law. *See Crumpton*  
10 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to  
11 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271  
12 (1994).

13       To satisfy the second prong, a plaintiff must allege facts showing how individually  
14 named defendants caused, or personally participated in causing, the harm alleged in the  
15 complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d 1350,  
16 1355 (9th Cir. 1981). A person subjects another to a deprivation of a constitutional right when  
17 committing an affirmative act, participating in another’s affirmative act, or omitting to perform an  
18 act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Sweeping  
19 conclusory allegations against an official are insufficient to state a claim for relief. *Leer*, 844 F.2d  
20 at 633. Further, a § 1983 suit cannot be based on vicarious liability alone, but must allege the  
21 defendant’s own conduct violated the plaintiff’s civil rights. *City of Canton v. Harris*, 489 U.S.  
22 378, 385-90 (1989).

1 In the Complaint, Plaintiff states he has been on phone restrictions since October 3, 2017  
2 and has been unable to contact his family to arrange for visitations. Dkt. 4, p. 3. Plaintiff names the  
3 Jail as the sole defendant in this action. *See* Dkt. 4. Plaintiff does not identify any individuals in  
4 the Complaint and fails to allege any wrong-doing by the Jail or allege how, specifically, the  
5 Jail's actions violated his constitutional rights. Therefore, Plaintiff has failed to adequately  
6 explain what actions or inactions by the Jail resulted in an alleged constitutional violation.  
7 Plaintiff's vague and conclusory allegations are insufficient to show the Jail violated his  
8 constitutional rights. *See Jones v. Community Development Agency*, 733 F.2d 646, 649 (9th Cir.  
9 1984) (vague and mere conclusory allegations unsupported by facts are not sufficient to state  
10 section 1983 claims).

11 If Plaintiff wishes to pursue this § 1983 action, he must provide a short, plain statement  
12 naming individual defendants and explaining exactly what each defendant did or failed to do and  
13 how the actions violated Plaintiff's constitutional rights and caused him harm.

14 *B. Improper Defendant*

15 Defendant, the Jail, is also not a legal entity capable of being sued under § 1983. Rather,  
16 Pierce County, a municipality, would be the proper defendant. *See Monell v. New York City*  
17 *Dept. of Social Services*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Wright v.*  
18 *Clark County Sheriff's Office*, 2016 WL 1643988, \*2 (W.D. Wash. April 26, 2016). To set forth  
19 a claim against a municipality, a plaintiff must show the defendant's employees or agents acted  
20 through an official custom, pattern, or policy permitting deliberate indifference to, or violating,  
21 the plaintiff's civil rights, or that the entity ratified the unlawful conduct. *Id.* at 690-91. A  
22 plaintiff must show (1) deprivation of a constitutional right; (2) the municipality has a policy; (3)  
23 the policy amounts to deliberate indifference to a plaintiff's constitutional rights; and (4) the  
24

1 policy is the moving force behind the constitutional violation. *See Oviatt v. Pearce*, 954 F.3d  
2 1470, 1474 (9th Cir. 1992).

3 Plaintiff has not named Pierce County as a defendant and has also not alleged facts to  
4 show Pierce County is liable. *See* Dkt. 4. If Plaintiff seeks to sue Pierce County, he must name  
5 Pierce County as a defendant and allege facts sufficient to meet the required elements of a claim  
6 against a municipality and show Pierce County violated his constitutional rights.

### 7 **III. Instruction to Plaintiff and the Clerk**

8 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an  
9 amended complaint and within the amended complaint, he must write a short, plain statement  
10 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the  
11 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the  
12 action or inaction of the individual is connected to the violation of Plaintiff's constitutional  
13 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*  
14 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each claim for relief must be simple,  
15 concise, and direct.

16 Plaintiff shall present the amended complaint on the form provided by the Court. The  
17 amended complaint must be legibly rewritten or retyped in its entirety, it should contain the same  
18 case number, and it may not incorporate any part of the original complaint by reference. The  
19 amended complaint will act as a complete substitute for any previously filed complaint, and not  
20 as a supplement. The Court will screen the amended complaint to determine whether it contains  
21 factual allegations linking each defendant to the alleged violations of Plaintiff's rights.

1 If Plaintiff fails to file an amended complaint or fails to adequately address the issues  
2 raised herein on or before May 9, 2019, the undersigned will recommend dismissal of this action  
3 pursuant to 28 U.S.C. § 1915.

4 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
5 civil rights complaint and for service.

6 Dated this 9th day of April, 2019.

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9 David W. Christel  
United States Magistrate Judge  
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